

TO: Local Education Agency Early Learning and Early Childhood Special Education Leaders

FROM: Dr. Antoine L. Hickman, Assistant State Superintendent *ALH*
Division of Special Education

Sarah Neville-Morgan, Assistant State Superintendent *SNM*
Division of Early Childhood

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SUBJECT: Publicly Funded Prekindergarten Programs and Children with Disabilities

Publicly Funded Prekindergarten Programs and Children with Disabilities¹

When the General Assembly passed the *Blueprint for Maryland's Future – Implementation* (Blueprint)² in 2020, it sought to expand access to high-quality, full-day prekindergarten programs for 3- and 4-year-old students through a mixed delivery system of eligible public and private providers. This unique system requires local education agencies (LEAs) to manage several factors in operationalizing the law, such as the inclusion of children with disabilities. The Maryland State Department of Education continues to receive questions regarding the LEA's concurrent obligations under the Individuals with Disabilities Education Act (IDEA) and State law. This memo addresses frequently asked questions.

Enrollment and Prekindergarten Funding

1. Are children with disabilities eligible to enroll in publicly funded full-day prekindergarten?

Yes. While enrollment is being phased in by income-based tiers, State law designates a priority enrollment preference for certain populations of children. Under Educ. § 7-1A-06(d), children with disabilities, regardless of income, are one of the priority categories for expanding prekindergarten slots. It is important to note that although children with disabilities have priority for enrollment, there is not an entitlement to full-day prekindergarten unless necessary to meet obligations under the IDEA. See Question #6 below for further information.

2. Do children with disabilities qualify for State aid under the publicly funded prekindergarten program?

Yes. If a child with a disability meets the definition of Tier I or II, then they qualify for State aid. The publicly funded prekindergarten program relies upon three “tiers,” which are primarily based upon

¹ For the purposes of this memo, “children with disabilities” refers to children who are found eligible under the Individuals with Disabilities Education Act.

² Chapter 36 of the Acts of 2020 (H.B. 1300).

family income.³ Only Tier I and Tier II children qualify for State aid under Educ. § 5-229 (Prekindergarten).

For the 2025-2026 school year ONLY, children with disabilities whose family income is more than 300% but not more than 600% of the federal poverty level shall be counted as a Tier I child for the purposes of funding allocation. See Educ. § 7-1A-06(a)(2)(ii).

3. Should the LEA collect family income verification for children with disabilities?

Yes. Family income verification is required for determining enrollment priorities and prekindergarten funding. If a family refuses to provide income verification, the child will automatically be categorized as a Tier III child, which will impact the LEA's prekindergarten enrollment and State aid calculations.

However, obtaining income verification should not prohibit or delay a student from receiving special education and related services required to provide a Free Appropriate Public Education (FAPE) as outlined in the child's Individualized Education Program (IEP). If a family declines to provide income verification, the child must still be provided a FAPE as outlined in their IEP. It should be clearly communicated to families that their choice to decline to provide income verification information will not impact the implementation of the child's IEP. The following is a sample statement that LEAs may wish to use in communicating with families:

MSDE requires local education agencies to collect income verification from families as part of the publicly funded prekindergarten enrollment process in order to allocate prekindergarten funding. This information is requested from all families enrolling their children in publicly funded prekindergarten. Children who are eligible for special education receive the services designated on their Individualized Education Program (IEP) at no charge and regardless of family income. The family's response to the request for income verification does not impact their child's IEP services in any way.

4. Can families of children with disabilities be charged a cost for publicly funded prekindergarten?

Under the IDEA, all special education supports and services must be provided at no cost to the family. If the IEP team determines that the child requires participation in a regular early childhood setting to achieve their IEP goals and receive FAPE, the LEA must provide such a setting at no cost to the family. Publicly funded prekindergarten is the available and appropriate regular early childhood setting in many LEAs.

If the IEP does not require participation in a regular early childhood setting in order for the goals to be achieved and to provide FAPE (e.g., the IEP only calls for speech-language services in a "pull-out" environment), and the family chooses to enroll the child in a publicly funded prekindergarten program, the family may be charged for the prekindergarten program consistent with Educ. § 5-229, but not for the special education services (e.g., the speech-language services).

³ See Educ. § 7-1A-01 for definitions of the tiers.

While the LEA may charge the family share, nothing in State law precludes a LEA from choosing to subsidize prekindergarten costs for Tier II and Tier III children with local funds.

Provision of FAPE and Special Education Funding

5. Who is responsible for providing FAPE to children with disabilities enrolled in a publicly funded prekindergarten program?

The LEA is responsible for providing each child with a disability eligible under the IDEA with FAPE. This includes identification, evaluation, and programming. The LEA may negotiate with a publicly funded private prekindergarten program to provide IEP services, but it cannot shift its FAPE obligation to the private provider.

6. Who decides the placement and location of services for the purposes of the IEP?

The IEP team remains responsible for determining the placement of the child, consistent with the least restrictive environment principle. If the student requires a regular early childhood setting to receive FAPE, then the LEA must make one available. The LEA determines the location of the program. As a best practice, if the child is enrolled in a regular early childhood setting (including public school-based prekindergarten programs, publicly funded private prekindergarten programs, or community program that is not publicly funded), the LEA should consider if the IEP can be implemented in that setting through itinerant services or other strategies.

If the LEA makes FAPE available in its school-based prekindergarten program, but the parent wants to use a publicly funded private provider, then the LEA must clarify with the parent that they are rejecting the FAPE offer and the subsequent implications. The parent should be provided with the procedural safeguards.

7. Do publicly funded prekindergarten providers receive a share of special education funding under Educ. § 5-225?

Yes. Under Educ. § 5-225(c), each LEA is responsible for distributing to each school or publicly funded prekindergarten program the minimum school funding amount, consistent with Educ. § 5-234. However, the purpose of the Educ. § 5-225 funds is to provide the services required by the student's IEP. If the LEA has not negotiated to have the publicly funded private provider deliver the student's IEP services, then it should ensure that the memorandum of understanding⁴ with the private provider clarifies that the LEA retains the funds to deliver the services itself.

⁴ Under Educ. § 7-1A-05, each LEA must enter into a memorandum of understanding with each eligible private provider participating in publicly funded prekindergarten in the county.

Technical Support

For additional information and support regarding the publicly funded prekindergarten program, please contact:

Dr. Nykia Washington, Prekindergarten and Mixed Delivery Program Manager –
nykia.washington@maryland.gov

Marny Helfrich, Section Chief for Early Childhood Special Education – marny.helfrich@maryland.gov